

LOUGHRAN *v.* LOUGHRAN ET AL., TRUSTEES.

CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 565. Argued March 7, 1934.—Decided April 30, 1934.

1. Marriages not polygamous or incestuous, or otherwise declared void by statute, will, if valid by the law of the State where entered into, be recognized as valid in every other jurisdiction. P. 223.
  2. A statute of the domicile forbidding remarriage of a spouse divorced for adultery, has only territorial effect and does not invalidate a marriage solemnized in another State in conformity with the laws thereof. Code, D.C., § 966. P. 223.
  3. Section 1287 of the Code of the District of Columbia, providing that if any marriage declared illegal "by the foregoing sections" shall be entered into in another jurisdiction by persons having and retaining their domicile in the District, such marriage shall be deemed illegal, etc., refers to preceding sections dealing with void or voidable marriages, and not to § 966, which deals with divorce *a vinculo* on the ground of adultery and provides that only the innocent party may remarry. P. 223.
  4. A woman who, while domiciled in the District of Columbia, was divorced for her adultery with a resident of the District and was forbidden to remarry there by § 966 of the District Code, but who was afterwards lawfully married to him in a State, became upon his death his lawful widow and entitled to dower in his real-property in the District. P. 225.
  5. The full faith and credit clause *held* applicable to a decree of alimony rendered in a State and sought to be enforced in the District of Columbia. P. 227.
  6. The mere fact that a woman was, while a resident of the District of Columbia, divorced there on the ground of adultery, with the result that, by D.C. Code, § 966, she was forbidden to remarry in that jurisdiction, affords no procedural obstacle to her assertion in the courts of the District of rights to dower arising from her subsequent marriage with the co-adulterer, solemnized in another jurisdiction, and of her rights under a judgment for alimony recovered against him in another jurisdiction. P. 228.
- 62 App.D.C. 262; 66 F. (2d) 567, reversed.

CERTIORARI, 290 U.S. 621, to review the reversal of a decree for dower.

*Mr. Robert H. McNeill* for petitioner.

*Mr. Wm. E. Leahy*, with whom *Messrs. Wm. J. Hughes, Jr., Eugene B. Sullivan,* and *James F. Reilly* were on the brief, for respondents.

As the answer denied that plaintiff became a *bona fide* resident of Florida, and that the marriage in Florida was in good faith, the only question submitted to the Court is whether a residence in Florida acquired in bad faith, and a marriage in bad faith, must be recognized by the District of Columbia courts.

Not only therefore does the record show that defendants denied that plaintiff acquired a *bona fide* domicile in Florida, but other facts in the record show that it is unlikely that she could have acquired a *bona fide* residence in Florida within the short time which elapsed between the date she was adjudged guilty of adultery with Loughran and the date she married him.

The good faith of the Florida residence and marriage being denied, the present case is exactly like *Olverson v. Olverson*, 54 App.D.C. 48, followed by the court below.

The full faith and credit clause does not require the District of Columbia courts to recognize a marriage in violation of the public policy of the District of Columbia itself. It does not apply in the District of Columbia; in so far as it is effective, it operates in the District only by reason of a federal statute. Act of March 27, 1804; 28 U.S.C., § 687.

The full faith and credit clause does not require the courts of a given jurisdiction to recognize a public act or record of another jurisdiction which is contrary to the public policy of the State of the forum. *Simmons v. Simmons*, 57 App.D.C. 216.

It is difficult to conceive how § 966 of the D.C. Code can be construed other than as a declaration of public policy. The legislative history of that section shows that it is so.

The divorce law of the District both as to length of time for residence and also in limiting the causes of divorce to adultery, is one of the most stringent in the country.

The Court of Appeals has not declared the public policy of this jurisdiction; it has merely taken cognizance of and applied an Act of Congress which does so.

It seems to be conceded by petitioner's counsel that if the marriage in the present case were a polygamous, incestuous or an abhorrent marriage, the full faith and credit clause would not require it to be recognized in the District even though it had been entered into in Florida. Am.L.Inst., Restatement of the Law of Marriage and Divorce, §§ 137, 138, 139, 142. The foregoing sections of the Restatement are of interest in the present case for the reason that Congress in enacting the District of Columbia Code has put the marriage of persons whose previous marriage has not been terminated by divorce in exactly the same classification as incestuous and polygamous marriages. D.C. Code, c. 43, § 1283. If the marriage has not been terminated by death or a decree of divorce, it is in exactly the same classification as an incestuous marriage.

The marriage of plaintiff to Daye was not terminated by a decree of divorce within the meaning of the word "terminate" as used in § 1283.

A further indication that the marriage has not been terminated in any absolute or complete sense is the fact that § 966 prohibiting the remarriage of a guilty party does not in so many words prescribe a penalty. It must be presumed that Congress enacted this with some intelligent purpose in mind and intended to make it as effective as it reasonably could. If it be conceded that it prescribes no penalty, and if it does not impinge upon the completeness of the decree of divorce, it follows that it is ineffec-

tive for any purpose whatsoever. The only rational interpretation of this section is that it is a statutory provision which is read into the decree of divorce in an applicable case, and that it deprives that decree of the absoluteness and completeness which it would otherwise have.

It should be noted also that the proviso of § 966 to the effect that only the innocent party may remarry is contained in the very section which conveys power upon the court to grant a divorce. Certainly it can not be contended that a court of the District could, in the teeth of § 966, pass a decree of divorce authorizing the guilty party to remarry. This being so, the reservation of the right of the guilty party to remarry is a limitation upon the power of the court to terminate a marriage by divorce.

The importance of whether plaintiff's marriage has been terminated within the meaning of § 1283 becomes clear when it is considered that § 1287 of the District of Columbia Code makes illegal in the District any marriage of persons domiciled in the District, if celebrated outside of the District, which marriage is illegal inside the District.

A court of equity has the right to deny equitable relief to one who has deliberately created a situation contrary to the public policy of the *lex fori*.

Petitioner herein, in equity, seeks the remedy of the District of Columbia court, whose decree *in personam* she has flouted and ignored. Her claim for dower is founded upon a marriage prohibited by a statute of the jurisdiction in which she seeks relief. *Armstrong v. Toler*, 11 Wheat. 258; *Hall v. Coppel*, 7 Wall. 542; *Oscanyan v. Arms Co.*, 103 U.S. 261; *Higgins v. McCrea*, 116 U.S. 671; *Hunter v. Wheate*, 53 App.D.C. 206; *Olverson v. Olverson*, 54 App.D.C. 48; *Morck v. Abel*, 3 B. & P. 35; *Collins v. Blanterm*, 1 Smith's Lead. Cas., Pt. 2, p. 716; *Vandyck*

v. *Hewitt*, 1 East. 96; *Clugas v. Penaluna*, 4 T.R. 466; *Weymel v. Read*, 5 T.R. 599; *Montefiori v. Montefiori*, 1 W. Black. 363; *Wilde v. Wilde*, 37 Neb. 891; *Lanktree v. Lanktree*, 42 Cal. App. 648; *Beard v. Beard*, 65 Cal. 354.

No principle seems to be better settled than that no court will lend its aid to one who founds his cause of action upon an illegal act. The good faith of the alleged Florida residence and the marriage therein being denied, the petitioner appeared in the court below as one whose position was created by reason of her violation of § 966, a positive law of the District of Columbia. Upon that ground, the court refused to lend to her its aid. The status she created was prohibited by law, on this present record.

Many cases are cited by petitioner to the effect that a marriage valid where performed is valid everywhere. To this rule there are exceptions as well known as the rule itself. Of these the most important is a marriage which the legislature, either by express terms or necessary implication, has declared to be invalid because of the public policy of the enacting State. *Maynard v. Hill*, 125 U.S. 190.

If the statute prohibiting the remarriage of the guilty party in divorce actions, contrary to the statute of the forum, is interpreted as an expression of the public policy of the enacting State, then a subsequent remarriage in another jurisdiction is invalid in the enacting State, notwithstanding the *lex loci* of the second jurisdiction. *Andrews v. Andrews*, 188 U.S. 14; *Haddock v. Haddock*, 201 U.S. 564; *Georgia v. Tutty*, 41 Fed. 753; *Jackson v. Jackson*, 82 Md. 17; *Simmons v. Simmons*, 57 App.D.C. 216; *Pennegar v. Tennessee*, 87 Tenn. 244; *Williams v. Oates*, 27 N.C. 535; *In re Stulls Estate*, 183 Pa. 625; *Heflinger v. Heflinger*, 136 Va. 289. See also, Restatement of the Law of Contracts, Am.L.Inst., § 142, p. 181.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

This case is here on certiorari to the Court of Appeals of the District of Columbia. It is a suit in equity brought in the Supreme Court of the District in 1932, by Ruth Loughran, then resident there. The defendants are John Loughran and others, trustees of real estate there located. The estate of Daniel Loughran, Jr., deceased, is a beneficiary. The plaintiff alleges that she is Daniel's widow; and she seeks to enforce, as such, rights in the nature of dower and to recover unpaid alimony. She alleges that in 1926 she married Daniel in Florida after living there more than two years; that in 1927 she and her said husband established their domicile in Virginia; that in 1929, while they were residing in Virginia, she obtained there a decree of divorce from him *a mensa et thoro*, with an award of alimony payable monthly; and that in 1931, while she remained Daniel's wife, he died, leaving a part of the alimony unpaid.

The trustees defend on the ground that before her marriage to Daniel, the plaintiff had been married to Henry Daye; that in 1924, while she and Daye were domiciled in the District, he had secured there an absolute divorce for her adultery with Daniel; that being the guilty party, she was by § 966 of the Code of the District prohibited from remarrying; and that, having remarried in violation of the statute, she is not in a position to enforce in a court of the District the alleged rights in the estate of the deceased. A copy of the record of the Daye divorce proceeding is annexed to the answer.

Section 966 provides:

"A divorce from the bond of marriage may be granted only where one of the parties has committed adultery during the marriage: *Provided*, That in such case the

innocent party only may remarry, but nothing herein contained shall prevent the remarriage of the divorced parties to each other: . . ."

On motion of the plaintiff, the case was heard on bill and answer. The trial court entered a decree for the plaintiff in respect to the claim in the nature of dower. That decree was reversed by the Court of Appeals of the District. It ordered that the cause be remanded to the lower court for further proceedings not inconsistent with the opinion, 62 App.D.C. 262, 263; 66 F. (2d) 567, 569, saying:

"It is unnecessary for us to concern ourselves with the legality of the Florida marriage in that State, or with the subsequent divorce proceedings in the State of Virginia since the disposition of the case is dependent entirely upon the law of the District of Columbia. In so far as the law of the District is concerned, the marriage between plaintiff and Daniel Loughran, Jr., in Florida, if performed in the District of Columbia, would be absolutely void, and the plaintiff, being the offending party against the law of the District, is in no position to enforce any claim against the estate of Daniel Loughran, Jr., growing out of the marriage in Florida."

Disclaiming consideration of the doctrine of clean hands, the court added:

"Plaintiff, by her own unlawful conduct has placed herself without the pale of the law, and cannot be heard in a court of equity to take advantage of her own wrong."

The trustees insist that the bill was properly dismissed because the plaintiff, retaining her domicile in the District, went to Florida and married there in order to evade the prohibition of § 966. The plaintiff contends that the admitted facts constitute no defence; that because the marriage was legal in Florida, its legality should, under the established doctrines governing conflict of laws, have been recognized by the courts of the District; and, more-

over, that this was required by the full faith and credit clause, since the validity of the Florida marriage had been adjudicated by the Virginia decree of divorce *a mensa et thoro*.

*First.* Marriages not polygamous or incestuous, or otherwise declared void by statute,<sup>1</sup> will, if valid by the law of the State where entered into, be recognized as valid in every other jurisdiction. *Meister v. Moore*, 96 U.S. 76; *Travers v. Reinhardt*, 205 U.S. 423, 440. The mere statutory prohibition by the State of the domicile either generally of the remarriage of a divorced person, or of remarriage within a prescribed period after the entry of the decree, is given only territorial effect. Such a statute does not invalidate a marriage solemnized in another State in conformity with the laws thereof.<sup>2</sup>

*Second.* We have no occasion to decide what the rights of the parties would be if it appeared that the plaintiff and her paramour, retaining at all times their domicile in the District, had gone to Florida for the purpose of evading § 966 by a marriage there; and had then returned to the District to live as man and wife.<sup>3</sup> It is argued that marriage within the District would have been illegal because prohibited by § 966; and that a marriage which would be illegal if entered into within the District must be treated under § 1287 as void, even if valid under the law of the State in which it was solemnized. But § 1287

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<sup>1</sup> For collection of statutes see: Vernier, *American Family Laws*, §§ 32, 45, 92. Compare *The American Law Institute, Restatement of Conflict of Laws, Proposed Final Draft No. 4, March 22, 1934*, pp. 88-95.

<sup>2</sup> See *Commonwealth v. Lane*, 113 Mass. 458; *Dudley v. Dudley*, 151 Iowa 142; 130 N.W. 785; *In re Miller's Estate*, 239 Mich. 455; 214 N.W. 428.

<sup>3</sup> By the widely prevailing view, the marriage would, even under such circumstances, be held valid by the courts of the domicile in the absence of express provision to the contrary. For cases see Joseph H. Beale, et al., *Marriage and Domicile*, 44 Harv.L.Rev. 501, 514-517.



has no application to marriages in violation of the prohibition of § 966. Section 1287 provides:

“If any marriage declared illegal by the foregoing sections shall be entered into in another jurisdiction by persons having and retaining their domicile in the District of Columbia, such marriage shall be deemed illegal, and may be decreed to be void in said District in the same manner as if it had been celebrated therein.”

The sections preceding § 1287 relate solely to marriages void, because incestuous or polygamous, and to those which are voidable, because entered into by a person who was a lunatic, under the age of consent, or impotent, and those which are voidable because procured by force or fraud. In the case at bar, there is no suggestion of any such obstacle to the validity of the marriage. The only objection urged is that by marrying in Florida the plaintiff violated § 966. But the preceding sections do not refer to § 966; and they contain no reference to remarriage of divorced persons. Their only reference to divorce is in Paragraph Third of § 1283 which declares void:

“The marriage of any persons either of whom has been previously married and whose previous marriage has not been terminated by death or a decree of divorce.”

Since the plaintiff had been legally divorced from Daye in the District while the parties were domiciled there, and the decree became effective under § 983a unconditionally and irrevocably, she was thereafter an unmarried woman; and if she had cohabited with Daniel in the District after the Florida marriage she would not have been guilty of polygamy. *Commonwealth v. Lane*, 113 Mass. 458, 460, 462.

Moreover, it does not appear that the plaintiff and Daniel did retain their domiciles in the District after her divorce, or that after the Florida marriage they ever lived in the District as man and wife. The trustees argue that it must be assumed on the pleadings that plaintiff's resi-

dence in Florida and the marriage there were not in good faith.<sup>4</sup> But the bill alleged the good faith of the residence and marriage in Florida; and the answer contains no specific denial of that allegation. Nor does it contain any averment that the residence in Florida and marriage there were with the intent of evading the prohibition against remarriage.<sup>5</sup> The Court of Appeals did not pass upon the issue sought to be raised. It expressly disclaimed deciding whether the Florida marriage was valid or what the effect of the Virginia decree was. And the question whether the marriage in Florida should be deemed void within the District because the parties went to Florida to evade the prohibition of § 966 was not presented by the petition for a writ of certiorari.

*Third.* The Court of Appeals stated that "the single question for determination here is, whether or not plaintiff is entitled to her dower interest"; and it held that the bill should be dismissed, regardless of whether the marriage was valid under the law of Florida. The requisites of dower are a valid marriage; seizin of the husband; and his death. It may be assumed that the law of the situs of real estate determines whether a widow is entitled to dower. Compare *De Vaughan v. Hutchinson*, 165 U.S. 566, 570. But, if the marriage was valid under the laws of Florida, the plaintiff was, under established doctrines of the conflict of laws, Daniel's widow. As such she was entitled, as an incident of the marriage, to dower in the property within the District. For, while a statute of the

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<sup>4</sup> The argument rests upon the phraseology of the answer and the equity rules of the Supreme Court of the District.

<sup>5</sup> The allegation is "that having openly and in utter disregard of the prohibition contained in said statute violated the terms thereof, she cannot now return to this jurisdiction and this Honorable Court and herein make application for relief with respect to the very situation and relationship which she could and did create only in direct violation of the prohibitory mandate of the statute."

District provides for forfeiture of dower in case of the wife's adultery during marriage;<sup>6</sup> none denies dower to a widow because she had been guilty of adultery prior to the marriage with her late husband.

Section 966 is not extra-territorial in its operation. It does not purport to prohibit remarriage outside the District; and no other statute denies dower to a widow because by remarrying elsewhere she had disregarded the prohibition contained in § 966. It does not make remarriage a crime, or in terms impose any penalty, even if contracted within the District; and obviously it could not make criminal remarriage elsewhere. Nor does it in terms declare the remarriage void. Apparently, it is the law of the District that a remarriage elsewhere in disregard of the prohibition of § 966, even where both parties remained domiciled in the District, is not void *ab initio*, but, at most, voidable; and that a voidable marriage cannot be annulled after the death of either spouse.<sup>7</sup>

No case has been found in which, independently of statutory direction, a widow has been denied dower on the ground that a remarriage, legal by the law of the place where celebrated, had been entered into in violation of some prohibition imposed by the law of the State in

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<sup>6</sup> The Code of the District 1929, Title 14, § 30, declares: "If a wife willingly leave her husband, and go away, and continue with her advouterer, she shall be barred forever of action to demand her dower, that she ought to have of her husband's lands, if she be convict thereupon, except that her husband willingly, and without coercion reconcile her, and suffer her to dwell with him in which case she shall be restored to her action."

<sup>7</sup> *Sammons v. Sammons* (S.C.D.C.), 46 W.L.R. 39, 41. See *Tyler v. Andrews*, 40 App.D.C. 100, 104; *Simmons v. Simmons*, 57 App.D.C. 216, 218-219; 19 F. (2d) 690, 692-3; *Abramson v. Abramson*, 60 App.D.C. 119, 121, 122; 49 F. (2d) 501, 503, 504. Compare *Dimpfel v. Wilson*, 107 Md. 329; 68 Atl. 561; *Bonham v. Badgley*, 7 Ill. 622.

which the divorce was granted and the property was situated.<sup>8</sup> Ordinarily the operation of a statute of descent and distribution is held not affected even by the fact that the death of the decedent was caused by a crime of the heir;<sup>9</sup> and, by the common law, dower is not barred even by misconduct during marriage. Since, as matter of substantive law, the plaintiff is entitled to dower in property within the District, if the marriage in Florida was valid, and its validity was assumed by the Court of Appeals, we have no occasion to consider whether the decree in the Virginia divorce proceedings made that matter *res judicata*.

*Fourth.* The relief sought by the bill includes, besides dower rights, a claim under the Virginia decree for the alimony which had accrued and remained unpaid at the time of Daniel's death. The right to recover the alimony is independent of the right to dower. It rests upon a judgment to which, so far as appears, full faith and credit must be given by the courts of the District. It is true that, under rules of law generally applicable, these courts may refuse to enforce a mere right of contract if it provides for doing within the District things prohibited by its laws. *Bothwell v. Buckbee, Mears Co.*, 275 U.S. 274, 278. It may, in the exercise of the police power, prohibit the enjoyment by persons within its borders of many rights acquired elsewhere and refuse to lend the aid of its courts to enforce them. *Home Insurance Co. v. Dick*, 281 U.S. 397, 410. But when rights, however arising, have ripened into a judgment of a court in another State, the full faith

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<sup>8</sup> Compare *Putnam v. Putnam*, 8 Pick. 433; *Dickson v. Dickson's Heirs*, 1 Yerg. 110. See 18 C.J., p. 859, § 102.

<sup>9</sup> *McAllister v. Fair*, 72 Kan. 533; 84 Pac. 112; *Eversole v. Eversole*, 169 Ky. 793; 185 S.W. 487; *Gollnick v. Mengel*, 112 Minn. 349; 128 N.W. 292; *Holloway v. McCormick*, 41 Okla. 1; 136 Pac. 1111; *Johnson's Estate*, 29 Pa. Sup. Ct. 255.

and credit clause applies. *Fauntleroy v. Lum*, 210 U.S. 230; *Converse v. Hamilton*, 224 U.S. 243, 260; *Kenney v. Supreme Lodge*, 252 U.S. 411, 415. And courts of the District are bound, equally with courts of the States, to observe the command of the full faith and credit clause, wherever applicable. *Bradford Electric Light Co. v. Clapper*, 286 U.S. 145, 155. Thus, the facts stated afford no basis in the substantive law for dismissal of the bill so far as it seeks to recover unpaid alimony. Whether the fact that this claim has been presented also in the probate court constitutes a reason for denying relief here, was not discussed below, and on this matter we express no opinion.

*Fifth.* It remains to consider whether the denial of relief can be justified on some principle of adjective law. The Court of Appeals holds that the "plaintiff by her own unlawful conduct has placed herself without the pale of the law"; but it does not state specifically the ground for that conclusion. The bar applied is not the plea of illegality commonly interposed in suits brought to enforce contracts tainted by illegality. In those suits the illegality relied on is inherent in the cause of action; is directly connected with the relief sought; and constitutes a substantive defence. Here, the relation of the illegality to the relief sought is indirect and remote. The wrong done is a thing of the past and is collateral. By the long line of cases following *Connolly v. Union Sewer Pipe Co.*, 184 U.S. 540, it is settled that illegality constitutes no defense when merely collateral to the cause of action sued on. A "person does not become an outlaw and lose all rights by doing an illegal act." *National Bank & Loan Co. v. Petrie*, 189 U.S. 423, 425. Courts grant relief against present wrongs and to enforce an existing right, although the property involved was acquired by some past illegal act. *Brooks v. Martin*, 2 Wall. 70, 79, 80; *Planters' Bank v. Union Bank*, 16 Wall. 483, 499, 500.

The Court of Appeals, while it disclaimed acting on the doctrine of clean hands,<sup>10</sup> declared that *Olverson v. Olverson*, 54 App.D.C. 48; 293 Fed. 1015 (decided by it in 1923) is decisive of the case at bar. But both the facts and the relief sought are different in the two cases. In the first place, the parties in the *Olverson* case were at the time of the marriage domiciled in the District; remained so when they went to Baltimore for the marriage ceremony with the purpose of evading the prohibition of § 966; returned immediately thereafter to the District; and then lived in the District as man and wife. On the other hand, in the case at bar it does not appear that the plaintiff and Daniel were domiciled in the District at the time of the marriage; or that they went to Florida in order to evade the prohibition of § 966; or that during their marriage they lived in the District; or that they ever cohabited there as man and wife. In the second place, the *Olverson* suit was brought by a wife for a decree of divorce *a mensa et thoro* with a motion for alimony; and was dismissed on the ground that the plaintiff could not "ask the courts of this jurisdiction to relieve her of the obligations of a relation which she willfully and wrongfully assumed."

The suit at bar was brought after termination of the marriage by death to enforce existing property rights growing out of the marriage in Florida and the decree entered in Virginia. It was not brought to enforce any transaction had within the District; nor was it brought to enforce an illegal contract; or to further an illegal relation.<sup>11</sup> Equity does not demand that its suitors shall have led blameless lives. Neither the doctrine of clean

<sup>10</sup> It had stated in *Simmons v. Simmons*, 57 App.D.C. 216, 218; 19 F. (2d) 690, 693, that the *Olverson* case rested on the doctrine of clean hands.

<sup>11</sup> Compare *Western Union Telegraph Co. v. Union Pacific Ry. Co.*, 3 Fed. 423, 427-8; *Bateman v. Fargason*, 4 Fed. 32.

hands, nor any kindred principle on which courts refuse relief, is applicable here. The decree of the Court of Appeals is vacated and the cause remanded to it for further proceedings not inconsistent with this opinion.

*Reversed.*

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McKNETT v. ST. LOUIS & SAN FRANCISCO RAIL-  
WAY CO.

CERTIORARI TO THE SUPREME COURT OF ALABAMA.

No. 597. Argued March 12, 1934.—Decided April 30, 1934.

The Federal Constitution forbids that a State should close its courts to transitory causes of action against foreign corporations arising in other States under federal law (Federal Employers' Liability Act) while opening them to the litigation of all like transitory causes arising in other States under state law. P. 232.

227 Ala. 349; 149 So. 822, reversed.

CERTIORARI, 290 U.S. 621, to review the affirmance of a judgment for the railway company in an action for damages.

*Mr. J. Kirkman Jackson*, with whom *Mr. Walter S. Brower* was on the brief, for petitioner.

*Mr. L. D. Gardner, Jr.*, for respondent.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

This action was brought under the Federal Employers' Liability Act, in the Circuit Court of Jefferson County, Alabama, to recover damages for an injury suffered in Tennessee. The plaintiff, McKnett, is a resident of Tennessee. The defendant, St. Louis & San Francisco Railway Company, is a foreign corporation doing business in Alabama. It pleaded in abatement that the court lacked jurisdiction, since the cause of action had arisen wholly